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MICHAEL RODAK, JR., CLE

# In the Supreme Court of the United States

**CASE NO.77-464**

PETER STORER and STUART W. PATTON
As Co-Executors of the Estate of
GEORGE B. STORER, Deceased,
*Petitioners,*

*vs.*

DOROTHY M. STORER,
*Respondent.*

**Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District**

## RESPONDENT'S BRIEF IN OPPOSITION

HUGO L. BLACK, JR.,
WILLIAM G. EARLE,
1400 Alfred I. duPont Building
Miami, Florida 33131
and
SAM DANIELS,
1414 Alfred I. duPont Building
Miami, Florida 33131

*Attorneys for Respondent.*

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of the Florida Supreme Court denying certiorari and denying a petition for rehearing are not yet reported but appear at pp. 10-20 of the Appendix.



## JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). The decision of the Third District Court of Appeal was filed December 17, 1974, reh.den. January 25, 1975. The Florida Supreme Court entered its order denying certiorari April 7, 1977; reh.den. June 28, 1977.

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NOTE: "A" refers to the Appendix of Petitioners. "T" refers to the trial transcript which was part of the record in the District Court of Appeal of Florida, Third District. All emphasis is supplied.

## QUESTION PRESENTED

Petitioners contend that the record presents the following question for review:

> "Whether a state must afford full faith and credit under the U.S. Constitution to a divorce decree of a sister state, which was entered after acquiring personal jurisdiction over the parties, and which ordered a substantial alimony award to the wife, when there is no probative evidence which shows a lack of jurisdiction in the divorcing state."

Respondent contends that no such question is presented for review. The Florida courts found that the Wyoming court did not acquire personal jurisdiction over respondent, who was a Florida domiciliary when served in Florida with Wyoming process.



## CONSTITUTIONAL PROVISION INVOLVED

Article IV, Section 1 of the United States Constitution provides:

> **"ARTICLE IV**
>
> *§1. Full faith and credit among states*
>
> Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

## STATEMENT OF THE CASE

In the spring of 1972, the petitioners' decedent, George B. Storer, filed a divorce action against respondent in Wyoming. Respondent was in Florida at the time. On April 25, 1972, she was personally served with Wyoming process in Florida. As petitioners state:

> ". . . Personal service was effected upon the wife extraterritorially pursuant to Wyoming's 'Long Arm Statute' providing for service upon *Wyoming domiciliaries* residing outside the state. . . ." (Petition, p. 3).

On May 30, 1972, the Wyoming court entered a decree which divorced the parties and purported to adjudicate alimony and property rights. The opening paragraph of the Wyoming decree recites that respondent was "not appearing in person or by attorney or otherwise." (A. 1)

A week before the Wyoming decree was entered, respondent filed a divorce action against George B. Storer in Dade County, Florida. Mr. Storer personally appeared in the Florida action and contended that the Wyoming decree was entitled to full faith and credit because respondent was a Wyoming domiciliary on April 24, 1972, when she was served with Wyoming process in Florida. Respondent, on the other hand, contended that she was a Florida domiciliary at the time.

The Florida trial judge heard the evidence and found that:



> ". . . Upon consideration of the evidence of the respective parties and argument of counsel, the Court finds that until January, 1972, the legal residence of both of the parties was Wyoming. The Court further finds that the residence of George B. Storer remained in Wyoming, but that Dorothy M. Storer, between January, 1972, and April 25, 1972, changed her legal residence from that of Wyoming to Florida, and on April 25, 1972, the date upon which she was served with process in Florida in the Wyoming divorce proceedings, and thereafter, she was not a domiciliary of Wyoming but was a domiciliary of the State of Florida. The Court further finds that the decree of the Wyoming court is entitled to full faith and credit under the Constitution of the United States insofar as it relates to the dissolution of the marriage but that the Wyoming decree is not entitled to full faith and credit under the Constitution of the United States insofar as it attempted to adjudicate alimony and the property rights of the parties, since Dorothy M. Storer was not a domiciliary of Wyoming on April 25, 1972. . . ." (A. 4-5).

Mr. Storer then appealed the above order to the District Court of Appeal of Florida, Third District, which affirmed, saying at 305 So.2d 213:

> ". . . After careful review of the record on appeal, we find there was substantial evidence to support the chancellor's findings of fact."

Mr. Storer then sought further review in the Supreme Court of Florida, which denied certiorari.

*The Evidence Adduced Below Fully Supports The Florida Trial Court's Findings of Fact*

The trial transcript clearly supports the Florida trial court's findings of fact.

Respondent moved to Florida with her first husband in 1952 (T. 121) and has lived in Dade County, Florida, for over twenty years. After her husband died, she visited Wyoming for the first time and as Mr. Storer's guest in 1959 (T. 76-77). She married Mr. Storer in 1960 (T. 76) and moved into his home at 26 Indian Creek Island, Dade County, Florida, where she still lives today (T. 79). The couple "redid" the house (T. 79) and respondent brought her china, glassware, and pictures there (T. 187).

Mr. Storer, a man of immense wealth, had vast land holdings in Wyoming, and, for tax reasons, wanted to establish a Wyoming domicile (T. 82, 190). Respondent acquiesced (T. 191) and the couple took the necessary steps to arrange a legal domicile in Wyoming (T. 112, 122).

So it was that until January of 1972, the happy couple were Wyoming domiciliaries. Then, as found and held below, a series of events commenced under which the respondent wife established a separate Florida domicile.

*Intent and Overt Acts Showing Respondent's Change of Domicile*

In January of 1972, Mr. Storer summoned respondent to Baker's Haulover parking lot in Dade County, Florida, told her he no longer wanted to live with her, left her, and never spoke to her again (T. 106, 120-121). Respondent wrote him a February letter suggesting a reconciliation



which was ignored (T. 120-121). With the marriage ended, respondent's sole reason for a Wyoming domicile likewise died as her husband and his tax problems were no longer a part of her life.

Respondent could no longer go to the Wyoming ranch (T. 128-129) and was asked to remove her personal things therefrom (T. 248). Thus, by February of 1972, respondent was faced with both the task of removing her belongings from Wyoming and deciding where to make her home.

The decision as to where she would live was made by March of 1972. She had toyed with the idea of moving to San Diego; made a trip there in March; "looked at it and decided I didn't like it, and came back to Florida" (T. 121). Her uncontradicted testimony is that she intended to live, reside and make Dade County her permanent home (T. 153, 155-156).

During the January — April period of 1972, the record shows the following overt acts by respondent to change her domicile:

1. Respondent had her personal belongings removed from the Wyoming ranch and shipped to a storage company in San Diego (T. 230-232). The reason San Diego was chosen was not that respondent still had thoughts of living there as petitioners argue but, "Because I didn't know what I had gotten and I wanted to go look at them before I spent the money to have them sent back here." (T. 233).

2. Respondent made a trip to California to see if she might want to live there; decided against it; and returned to her Indian Creek home.

## REASONS FOR DENYING THE PETITION

Respondent respectfully submits that the writ should be denied because:

1. The only issue raised or decided below was a question of fact — where was respondent domiciled on April 25, 1972. Mr. Justice Holmes, speaking for the unanimous Court, long ago stated as to issues of domicile, "It is not for us to retry the facts." Burbank v. Ernst, 232 U.S. 162, 164 (1914).

2. The decision below accords with this Court's decisions. The Court recently observed in Sosna v. Iowa, 419 U.S. 393, 407-408 (1975):

> ". . . Where a divorce decree is entered after a finding of domicile in ex parte proceedings, this Court has held that the finding of domicile is not binding upon another State and may be disregarded in the face of 'cogent evidence' to the contrary. Williams, supra, at 236, 89 L Ed 1577, 147 ALR 1366. . . ."

Petitioners are in a poor position to argue that the necessary "cogent evidence" is lacking since they admit that "Extensive discovery and testimony was taken in support and contravention of that motion, which basically covered the entire life style and history of both parties. . . ." (Petition, p. 4).

3. The cases relied on by petitioners are readily distinguishable. Texas v. Florida, 306 U.S. 398 (1938), was a case of original jurisdiction in litigation between two states and the full faith and credit clause was not involved. Wil-



liams v. North Carolina, 325 U.S. 226 (1945), affords petitioners no comfort because, as noted in Sosna v. Iowa, supra, Williams refutes petitioners' claims — ex parte findings of domicile are not binding on "another State and may be disregarded in the face of 'cogent evidence' to the contrary." Finally, Atherton v. Atherton, 181 U.S. 155 (1901), merely holds that personal jurisdiction is not constitutionally required to change the "status" of the parties from married to divorced — a holding followed below.

4. Petitioners advance abstract discussions about their dislike of the divisible divorce concept and "growing trends" to allow domestic financial affairs to be adjudicated after service by publication. These matters were neither raised nor decided below and present nothing for the Court's consideration.

5. The decision below does justice between the parties and is of no importance whatsoever beyond the facts of the particular case.

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5. The decision below does justice between the parties and is of no importance whatsoever beyond the facts of the particular case.



## CONCLUSION

It is respectfully submitted that the petition should be denied.

Respectfully submitted,

HUGO L. BLACK, JR.
WILLIAM G. EARLE
1400 Alfred I. duPont Building
Miami, Florida 33131
and
SAM DANIELS
1414 Alfred I. duPont Building
Miami, Florida 33131
Attorneys for Respondent

BY SAM DANIELS
SAM DANIELS

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that on this 14th day of October, 1977, I mailed, postage prepaid, three (3) copies of the foregoing Brief of Respondent to SAMUEL SPECTOR, ESQUIRE, Spector & Tunnicliff, P.A., P. O. Box 82, Tallahassee, Florida 32302; and three (3) copies to HERBERT L. NADEAU, ESQUIRE, Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, 150 S.E. 2nd Avenue, Miami, Florida 33131.

SAM DANIELS

SAM DANIELS